

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 06-018-JJF
)	
PFC. ROBERT C. LEGATES,)	
PFC. WHEATLEY, MILLSBORO)	
POLICE DEPARTMENT AND TOWN)	
OF MILLSBORO)	
)	
Defendants.)	

DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT

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Dated: August 27, 2007

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ARGUMENT

I. PLAINTIFF HAS FAILED TO SET FORTH SPECIFIC FACTS
SHOWING THAT THERE IS A GENUINE ISSUE FOR TRIAL.

Rule 56(e) of the Federal Rules of Civil Procedure provides: "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's, pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." In support of their Motion for Summary Judgment, defendants submitted the sworn affidavits of Officer Legates and Officer Wheatley regarding Laskey's arrest on January 3, 2004. Plaintiff's Opposition to the Motion merely reiterates the allegations in his Amended Complaint and disputes some of the facts in defendants' affidavits. That is not sufficient to create a genuine issue of material fact for trial.

In Dowling v. City of Philadelphia, 855 F.2d 136 (3d Cir. 1988) the City moved for summary judgment based on sworn testimony of the officers who arrested plaintiff. Like Mr. Laskey, the plaintiff in Dowling responded to defendants' Motion "with a brief answer and...memorandum denying the City's contentions and reiterating the allegations in her Complaint.

She failed to include either any affidavits or any other supporting materials.” Id. at 143. The Third Circuit affirmed the District Court’s grant of summary judgment in favor of the City.

The affidavits of Officers Legates and Wheatley show they did not use excessive force during the course of plaintiff’s arrest and DUI blood draw. Because plaintiff puts forth no evidence to the contrary, there is no genuine issue of material fact. See Dowling, 855 F.2d 136, 143-144 (Plaintiff may not rely on denials of defendants’ contentions and reiteration of allegations in the Complaint to defeat motion for summary judgment, but must instead point to affidavits or other evidence which supports his claim).

II. DEFENDANTS TOWN OF MILLSBORO AND MILLSBORO POLICE DEPARTMENT ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE THERE IS NO EVIDENCE OF A MUNICIPAL CUSTOM OR POLICY WHICH CAUSED PLAINTIFF'S ALLEGED INJURY.

Plaintiff's Opposition fails to set forth any evidence of a municipal policy or custom that caused his alleged injury.

Monell v. Department of Social Services, 436 U.S. 658, 694

(1978). Because there is nothing in the record which indicates that "the alleged constitutional transgression implements or executes a policy, regulation or decision officially adopted by the governing body or informally adopted by custom", Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996), defendants Town of Millsboro and Millsbroo Police Department are entitled to summary judgment.

CONCLUSION

For the foregoing reasons and for the reasons set forth in Defendants' Opening Brief, defendants request that summary judgment be entered on their behalf.

AKIN & HERRON, P.A.

/s/ Bruce C. Herron

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NOTICE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2007, a copy of DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT was electronically filed with the Clerk of the Court using CM/ECF and was sent first class mail to the following party:

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